

Life After *In re JW*: Implications for Policy and Practice

Presenters:

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Facts of the Case

- May 2007 Neglect Petition
- July 2007 Foster Placement
- August 2008 TPR Recommendation
- November 2008 Intervention from Uncle
- December 2008 Evidentiary Hearing
- Appeal by Mother; *In re JW*, 226 P.3d 873 (Wyo. 2010)

Majority Opinion

- Disposition: Reversal of district court
- Holding: in cases like *JW*, what is best for children is placement with nuclear or extended family members

Majority Opinion, cont.

- Standard of review
 - Due to constitutional rights at play, clear and convincing evidence needed to sustain on appeal
 - Different standard in custody disputes between non-parent relative and non-relative
 - District court's discretion circumscribed
 - ***De novo* review**

Majority Opinion, cont.

- Kinship preference
 - More than a recommendation
 - New best interests determination
 - As a matter of law and fact, placement with family IS in a child's best interests
 - Kinship preference certainly exists in Wyoming
 - But, legislative recognition that placement with relatives is not always aligned with best interests

Majority Opinion, cont.

- Associational rights of families
 - Case law in WY largely deals with parents' rights
 - *Moore v. City of East Cleveland*
 - Does this case support a right to custody?
 - Basis for kinship preference
 - Meant to serve children

Majority Opinion, cont.

- Best interests
 - When kinship option like that in *JW* available, placement with relatives = best interests

Implications for Practitioners

- *How will the apparent associational rights of non-parent relatives alter the practices of DFS and Wyoming Lawyers?*
 - Presumption that kinship placement is in a child's best interests
 - DFS and GALs now need to identify and evaluate all possible placement options
 - DFS will need to acknowledge and properly prioritize rights of relatives
 - But how will competing claims be treated?
 - Parents' involvement?

Implications for Practitioners

- *If a fit relative exists as a placement option, must a child be placed with that relative regardless of other factors?*
 - May now be a single determinative factor in all best interests evaluations
 - Facts of *JW* indicate broad application of kinship “preference”
 - Kinship preference now looks like a kinship mandate
 - Precedential force of case?

Implications for Practitioners

- *How will JW operate to serve (or not serve) children's best interests?*
 - In general, practitioners do not deny wisdom underlying kinship preference
 - But, family may not always be best option
 - Common trends across families
 - Post-termination contact
 - Fewer resources directed at kinship placements

Implications for Practitioners

- *Of what value are the best interest recommendations of DFS and GALs moving forward?*
 - Elimination of GAL role?
 - As long as relative demonstrates unspecified degree of fitness, dictated placement with relative
 - In cases where no rights-based result, GAL role still important
 - Plus, GALs still needed to assess relative fitness

- Case note title:
 - Blood as Best Interests: The Wyoming Supreme Court Expands Associational Rights and the Preference for Kinship Placement; *In re JW*, 226 P.3d 873 (Wyo. 2010)
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Overview of Federal Law

Title IV-E of the Social Security Act, requires that Wyoming (a state receiving federal money for foster care and adoption assistance):

- “Consider giving preference to an adult relative over a nonrelated caregiver when determining placement for a child, provided that the relative caregiver meets all relevant State child protection standards.”¹ 42 U.S.C. § 671(a)(19) (LexisNexis 2010)
- Exercise due diligence to identify and provide notice to all grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents), that the child has been or is being removed from the custody of his or her parents, explains the options the relative has to participate in the care and placement of the child, and describes the requirements to become a foster parent to the child. 42 U.S.C. § 671(a)(29) (LexisNexis 2010), as amended by the Fostering Connections to Success and Increasing Adoptions Act of 2008.

Overview of Department of Family Services Policy

- 5.2.4 Relative and Kinship Placement
- 5.2.6 Preserving Connections
- 5.6 Diligent Search for Absent Parents
- 5.7 Diligent Search for Relatives and Kinship Care

You can find DFS policies at: <http://dfsweb.state.wy.us/about-us/dfspolicyPSD.html>

Discussion

Q & A